

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

**GROCERYWORKS.COM OPERATING
COMPANY LLC**

Employer

and

Case 19-RC-254203

**TEAMSTERS LOCAL UNION NO. 58 AND
GENERAL TEAMSTERS LOCAL UNION NO.
162, AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

Joint Petitioners

DIRECTION OF ELECTION

The Employer provides grocery delivery service in the Portland, Oregon, metropolitan area. Joint Petitioners seek to represent a unit of about 56 ecommerce drivers employed to deliver groceries from 6 stores in King City, West Linn, and Portland, Oregon, and Vancouver, Washington.

The parties have reached a stipulation on most substantive matters. There are two contested matters. First, the Employer believes that the petitioned-for employees share a community of interest with three e-commerce driver/trainers, whereas the Joint Petitioners argue that these three employees should be excluded as supervisors. Because the three employees constitute a small percentage of the petitioned-for unit and their inclusion or exclusion would not significantly affect the size or character of the unit, I have deferred the question of the eligibility of these employees to post-election proceedings. Second, the parties could not agree as to the logistics of holding the petitioned-for election, which is a non-litigable issue. As explained in greater detail in the following sections, I will direct a mail-ballot election.

THE EMPLOYER'S OPERATION

The Employer provides Internet-based grocery delivery from Safeway stores. The delivery area extends from Longview, Washington, south to King City, Oregon, a distance of 61 miles, and from Washougal, Washington, west to Hillsboro, Oregon, a distance of 41 miles.¹

Drivers work 4-hour shifts, from 7 to 11 AM, 11:30 AM to 4 PM, and 4:30 to 8:30 PM, although sometimes work past the end of their shifts as necessary given customer orders, customer locations, and traffic. Drivers consistently work particular shifts and days.

¹ Distances derived from Google, of which I take administrative notice.

For each shift, each driver is assigned to a store, from which the driver picks up groceries at the beginning of and throughout the shift. Although each driver has a “home” store to which the driver is normally assigned, drivers frequently are assigned to deliver from other stores. There are no fixed routes, as deliveries are made according to customer orders. As of the hearing date, January 15, 2020, the Employer had not yet issued schedules for the days it proposed holding the election, January 26 and 27.

CONCLUSION

Election arrangements, including the voting method, are not matters within the scope of a pre-election hearing. Pursuant to its longstanding practice, the Board has left such determinations to the discretion of the Regional Director. *Austal USA, LLC*, 357 NLRB 329, 330 (2011); *Halliburton Services*, 265 NLRB 1154, 1154 (1982); see also NLRB Casehandling Manual (Part Two), Representation Proceedings Sections 11228, 11301.4. I recognize that it is also the Board’s longstanding policy that representation elections should, generally, be conducted manually, but there are instances where circumstances tend to make it difficult for eligible employees to vote in a manual election or where a manual election, though possible, is impractical and the use of a mail ballot enhances the opportunity for all employees to vote. *Id.* at 11301.2. This includes situations where eligible voters are “scattered” because of their job duties over a wide geographic area, or where eligible voters are “scattered” in the sense that their work schedules vary significantly, so that they are not present at a common location at common times. *Id.*

Manual elections are in general preferable, in part because when held in an employee’s workplace they facilitate the opportunity for all employees to vote. However, conducting a manual election at only a subset of locations has the opposite effect for many employees, placing a significant burden on those not employed at those locations, requiring them to travel to an entirely separate location. Here, it is not in dispute that a manual election cannot be held at all 6 sites involved. While the Employer has suggested running the election over multiple days, I find the potential of requiring an employee to report to a location where they do not work inconsistent with enhancing an employee’s ability to vote. Nor is it clear that schedules for the election days would be issued prior to posting of the notice of election. This means it is unknown what store each employee would be delivering from on the election days and therefore unknown at what location each would vote.

Furthermore, here, although the Employer is willing to allow employees to travel on work time to get to a polling place to vote, the Employer cannot assure in advance that employees will be able to do so, given the on-demand and traveling nature of their work. In order to attempt to ensure all drivers could vote, the Employer proposed closing delivery orders during certain windows of time, a disruption of its business. A manual election typically involves a minimal disruption in an employer’s business, but this is not the case here.

Therefore, in reviewing the options, I have determined it is not feasible to conduct manual voting without a significant risk of disenfranchisement. I also take administrative notice of the fact that all political elections in the states of Washington and Oregon are conducted

entirely by mail; therefore, the employees will be familiar with voting by mail. Under these circumstances, I find it is appropriate to conduct a mail-ballot election.

Based upon the entire record in this matter, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time eCommerce Drivers employed by the Employer at or from its facilities located at 15570 Southwest Pacific Highway, King City, Oregon 97224; 22000 Salamo Road, West Linn, Oregon 97068; 1100 Northeast Broadway Street, Portland, Oregon 97232; 2800 Southeast Hawthorne Boulevard, Portland, Oregon 97214; 13485 Northwest Cornell Road, Portland, Oregon 97229; and 13023 Northeast Highway 99, Suite 1, Vancouver, WA 98686.

Excluded: All confidential employees, office clerical employees, and guards and supervisors as defined by the Act.

In view of the fact that the Employer has not contested that the unit sought by Joint Petitioners is appropriate for collective bargaining, I conclude that the Employer's Statement of Position establishes that the Employer is disputing the exclusion of driver/trainers from the unit and therefore the eligibility of these individuals to vote. Because the Employer's Statement of Position raises eligibility issues affecting at most 5 percent of the unit, I conclude that the Employer's contentions do not significantly change the size or character of the unit and thus are not relevant to a question concerning representation. Therefore, I instructed the hearing officer to not allow the parties to present evidence, as I concluded that it was unnecessary to resolve the eligibility issues before the election is conducted.

² The Employer, a Delaware corporation with offices and places of business in the Portland, Oregon, metropolitan area, is engaged in the business of grocery delivery services. Within the past twelve months, a representative period, the Employer received gross revenue in excess of \$500,000 and purchased and received goods valued in excess of \$50,000 directly from points outside the State of Oregon.

Therefore, consistent with Section 102.64 of the Board's Rules and Regulations, I direct an election in this matter, and I further order that driver/trainers may vote in the election, but their ballots shall be challenged, because their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be jointly represented for purposes of collective bargaining by Teamsters Local Union No. 58 and General Teamsters Local Union No. 162.

A. Election Details

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 4:30 PM on Tuesday, February 4, 2020, ballots will be mailed to voters from the National Labor Relations Board, Subregion 36, Green-Wyatt Federal Building, 1220 SW 3rd Avenue, Suite 605, Portland, Oregon. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Tuesday, February 11, 2020, should communicate immediately with the National Labor Relations Board by either calling the Subregion 36 Office at 503-326-3085 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be commingled and counted at the Subregion 36 Office at the Green-Wyatt Federal Building, 1220 SW 3rd Avenue, Portland, Oregon, on Tuesday, February 25, 2020, at 3 PM.³ In order to be valid and counted, the returned ballots must be received in the Subregion 36 Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **January 11, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail as described above.

³ At hearing, the Union waived its right to have the voter list 10 days prior to the election.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **January 28, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: January 24, 2020



Ronald K. Hooks, Regional Director
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